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CC Docket No. 94-129

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**Reply of the Rural LECs**  
**CC Docket No. 94-129, July 6, 1999**

**I. THE COMMENTS DO NOT REFUTE THE NEW, RELEVANT AND CONVINCING EVIDENCE THAT EXECUTING CARRIER VERIFICATION IS EFFECTIVE AGAINST SLAMMING AND IS DESIRED BY LEC SUBSCRIBERS**

**A. Evidence that Verification Prevents Slamming Outweighs Speculation that Verification is Anti-Competitive**

The Rural LECs' petition contains evidence that its customers would have been slammed in significant numbers if the LECs had not been allowed to verify carrier change requests. The data is new, highly relevant to this proceeding, and is proof that executing carrier (i.e., LEC) verification of carrier change requests does deter slamming and therefore should be permitted.<sup>2</sup> In its Second Report and Order<sup>3</sup> the Commission ordered executing carriers to cease verifying carrier change requests because of concern that LECs would engage in anti-competitive practices, i.e., defer or deny carrier change requests in order to advantage their own (LEC) affiliates. As Rural LECs pointed out in their petition, there has never been any documentation of such anti-competitive practices, only self-serving speculation, primarily by IXC's that, ironically, have themselves engaged in slamming. It is simply not credible for IXC's to argue that evidence of slamming submitted by Rural LECs is not relevant to the issue of whether executing carrier verification should be reinstated. That evidence - that Rural LECs' customers have been told false and misleading statements in order to induce them to change carriers, as well as data that shows a high percentage of carrier change requests are rejected

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<sup>2</sup> Rural LECs and NTCA "present persuasive arguments that the Commission improperly analyzed the issue of separate LEC verification." US WEST comments at p. 2.

<sup>3</sup> Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policy and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, rel. Dec. 23, 1998, 64 Fed. Reg. 7746, as corrected, 64 Fed. Reg. 9219 (Feb. 16, 1999) ("Second Report and Order").

by subscribers as unauthorized - is directly relevant to whether the benefits of executing carrier verification outweighs its potential for anti-competitive abuse.<sup>4</sup> Moreover, the data is highly probative that executing carrier verification is a deterrence to slamming.

Parties opposing executing carrier verification - mainly IXC's - continue to offer unsupported allegations that LECs are in a position to use their positions to engage in anti-competitive behavior.<sup>5</sup>

In lieu of evidence, parties offer false statements and speculative theories. MCI, for example, makes the false assertion that Pineland Telephone Cooperative competes with MCI in its region in the intraLATA market, and therefore Pineland has an incentive to elicit rejection responses. Yet, as Pineland's Manager, A.M. "Ben" Bennett, makes clear in his statement, attached hereto, Pineland does not offer long-distance service of any kind. Pineland thus has not even a theoretical incentive to distort its slamming data, which is consistent with that of the other Rural LECs in showing a high rate of rejection of supposedly verified carrier change requests.

In addition to outright falsehoods, parties attempt to turn the arguments for executing carrier verification on their head. For example, they argue that the close relationship of rural LECs with their customers validates the need for a prohibition against executing carrier verification,<sup>6</sup> when in fact, this

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<sup>4</sup> MCI's statement that its sales representatives are trained not to engage in slamming does not refute Rural LECs' evidence that their sales agents are in fact engaging in this practice. Notably, MCI does not refute that the misleading and false statements were in fact made to the Rural LECs' customers by sales representatives on MCI's behalf.

In a similarly mode, Sprint makes the statement that it "does not deliberately seek to convert customers to its service without proper authorization...." Sprint comments at 4 emphasis added. This does not refute the evidence presented by the Rural LECs that unauthorized conversions are taking place.

<sup>5</sup> Cable and Wireless comments at 4.

<sup>6</sup> Cable and Wireless comments at pp. 3-4.

close relationship imposes a greater expectation on the carrier to protect the subscriber from slamming.<sup>7</sup>

Sprint goes to great lengths to discredit the Rural LECs' data. Sprint not only misconstrues the data, but also infers a variety of sinister reasons to explain why there is a high percentage of subscriber rejection of supposedly authorized carrier changes, and why the Rural LECs want to verify carrier change requests, except for the actual reason - to prevent their customers from being slammed. For example, Sprint claims that few rural LECs without IXC affiliates verify carrier change requests.<sup>8</sup> In fact, the list of rural LECs providing data was not a definitive list of all rural LECs that verify, but merely an illustrative one. As the National Telephone Cooperative Association (NTCA) pointed out in its Petition for Reconsideration, which also requested reinstatement of executing carrier verification, less than 40% of its members have IXC affiliates.<sup>9</sup>

Sprint also argues that the Rural LECs' data was flawed because it did not include all IXCs that engage in slamming. The Rural LECs' Petition focused on the "Big 3" for ease of understanding, however the companies collected data on all IXCs. Nevertheless, at least one of the "Big 3" were consistently at the top of the lists. Sprint's assertion that it had lower complaint levels as a percentage of gross revenue is irrelevant to how many times rural subscribers were slammed. Further, the data submitted for Blackfoot Telephone Cooperative did not specify the IXC involved. Moreover, even assuming that Sprint, MCI and AT&T had the fewest slamming complaints leveled

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<sup>7</sup> AT&T's claim, that there is no proof that customers hold their LECs to blame when slamming occurs is contradicted by the FCC. See Second Report and Order at para. 55.

<sup>8</sup> Sprint comments at p. 3.

<sup>9</sup> NTCA Petition at p.12, n.40.

against them, it does not follow that slamming by these companies was the lowest, numerically, for rural subscribers.

Sprint further hypothesizes that the LECs may have created the slam by informing customers of the carrier change charge, or by talking to a member of the household who was unaware that another household member had authorized a carrier change.<sup>10</sup> Yet, as reported in the Rural LEC petition, when Blackfoot Telephone Cooperative sought verification from its subscribers by mailing verification forms that were not subject to human error, i.e., the kind of miscommunication or misinterpretation that Sprint alleges, 67% of those subscribers responded that the carrier change requests were invalid. Note that this percentage was calculated after removing changes rejected because of the various errors postulated by Sprint. The Rural LECs recognize that not all changes rejected by subscribers are the result of intentional slamming, some are merely mistakes by the IXC, the subscriber, or even the LEC. But the volume of rejections experienced by the Rural LECs before they were forced to stop verification is far beyond the inevitable level of "mistakes."

Irresponsible, unsupported allegations and theories only demonstrate the weakness of the arguments against executing carrier verification as a means of preventing slamming. These arguments are strained attempts to explain away data that proves that executing carrier verification prevents slamming. As U S West points out, "[e]vidence of slamming in the 40 and 50 percent ranges screams out for additional prophylactic activity to be taken up front - activity such as additional verification;" slamming should be prevented rather than remedied at the "back end."<sup>11</sup>

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<sup>10</sup> Sprint comments at p. 4, n.2.

<sup>11</sup> U S West comments at p. 12.

IXCs may be fearful of competition from LECs in the IX market, but they offer no proof that LECs have used or will use their position as executing carriers to compete unfairly.

**B. Section 222(b) Does Not Preclude Carrier Verification**

In their Petition for Reconsideration, NTCA clearly and correctly explained that Section 222(b) of the Communications Act, which was intended to prevent carriers from using information obtained from other carriers for their own marketing purposes, does not prevent carriers from disclosing to customers information about the customer's alleged choice of carrier. The FCC was incorrect in applying Section 222(b) to its anti-slamming rules to prohibit executing carrier verification. The Commission's analysis "stretches the language of Section 222 beyond reasoned interpretation."<sup>12</sup>

As U S West succinctly explains, "the LEC violates no 'confidentiality' obligation by communicating with the affected customer -- the affected principal in the transaction" when it seeks to verify a carrier change request.<sup>13</sup> None of the opponents provide substantive support for the Commission's erroneous conclusion or explain how information purporting to be about a subscriber's account can be considered proprietary *as to the subscriber*. The question of what actions are permitted by Section 222(b) in regard to proprietary information doesn't arise if the information is not proprietary. Would the Commission hold that an executing carrier must respond to a subscriber inquiry as to whether any carrier changes have been submitted on his or her behalf with the response: "I'm sorry, we can't tell you what the status of your account is, its a secret between us and the long

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<sup>12</sup> Id. at p. 14.

<sup>13</sup> Id. at pp. 14-15.

distance company?"

## **II. AT&T'S PROPOSED CHANGES TO THE PREFERRED CARRIER FREEZE PROGRAM DISTORT ITS PURPOSE AND OPERATION AND SHOULD BE REJECTED**

In its petition for reconsideration, AT&T requested changes to the Preferred Carrier Freeze ("PCF") program that the Commission previously considered and rejected.<sup>14</sup> AT&T presents no new evidence for the requested changes. As to their merits, the changes would completely undermine the objective and operation of the PCF program.

None of the comments in support of AT&T's proposed changes offer any evidence to the contrary. Instead, they either echo AT&T's conclusory statement that the FCC did not offer a rational basis for rejection of a proposal the first time around<sup>15</sup> or they insist that the same rules that apply to verification of a carrier change should apply to verification of a carrier freeze change. The rational basis argument fails because there is clearly a rational basis for establishing different, more stringent procedures for a carrier change where a freeze has been requested by the subscriber than for a carrier change that is not subject to a freeze. The "no rational basis" argument fails to acknowledge that the unique purpose of the freeze program is to offer subscribers a greater degree of protection against slamming.<sup>16</sup>

The personal involvement of the subscriber in freezing their preferred carrier, lifting a freeze,

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<sup>14</sup> See, e.g., Second Report and Order at para. 131, rejecting third-party verification of a request to lift a freeze.

<sup>15</sup> See MCI comments at p.p. 11-12, stating there that there is no reasoned basis for rejecting third-party verification of freeze changes.

<sup>16</sup> GTE comments at p. 7.

or changing carriers and instituting a freeze anew is at the heart of the freeze program.

[T]he essence of the preferred carrier freeze is that a subscriber must specifically communicate his or her intent to request or lift a freeze.<sup>17</sup>

Thus, as U S West notes, "the hallmark of preferred carrier protection is a personal message communicated by the principal and not through any agent."<sup>18</sup> This added protection is optional, instituted only at the discretion of the subscriber.

Assuming the freeze change procedures imposes a minimal, additional burden on carriers, as they allege, the Commission has made clear why such a burden is acceptable - the benefits of the added protection against slamming far outweigh the burden on carriers. As Bell Atlantic points out, the Commission recognized that "carrier freezes requested by consumers would not be effective if they could be overridden by carrier action."<sup>19</sup>

The reason that the PCF was necessary in the first place was because IXCs and/or their agents were claiming they had verified changes when they had not.

PC protections arose in an environment where IXCs were not only claiming they were agents of the customer but also that they had verified the customer's choice to change carriers. Often these were just bold lies....<sup>20</sup>

And as NTCA points out, a carrier that would risk submitting an unauthorized change request, would also risk an unauthorized request to impose or lift a PCF.<sup>21</sup>

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<sup>17</sup> Second Report and Order at para. 131.

<sup>18</sup> U S West comments at p. 10.

<sup>19</sup> Bell Atlantic comments at p.3, citing Second Report and Order at para. 131.

<sup>20</sup> U S West comments at p. 10.

<sup>21</sup> NTCA comments at p. 4; see also, GTE comments at pp. 7-8.



The objectives of the PCF should not be defeated because carriers claim that the PCF imposes too great a burden on them, which it clearly does not. Subscribers should not be denied the protections under the PCF that the Commission intended. These protections afford subscribers some level of control over a sophisticated telecommunications marketing environment. AT&T's proposals weaken these protections, and therefore they should be rejected.

### **III. CONCLUSION**

The Rural LECs urge the Commission to reinstate the executing carrier verification program that has served rural subscribers so well by preventing slamming. The Rural LECs also urge the Commission to reject AT&T's proposed changes to the PCF program because they would eliminate the subscriber's personal involvement in the freeze program, and in so doing, thwart the program.

Respectfully submitted,

The Rural LECS



David Cosson  
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July 6, 1999

**Statement of A. M. "Ben" Bennett**

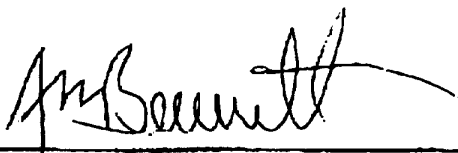
I, A.M. "Ben" Bennett, am the General Manager of Pineland Telephone Cooperative ("Pineland") in Metter, Georgia.

In comments filed in response to the Rural LECs' Petition for Reconsideration of the Federal Communications Commission's Second Report and Order in CC Docket 94-129, MCI WorldCom stated:

Pineland competes in the intraLATA market for the very customers that have selected MCI. It is not surprising that its rejection of verified change requests is high given that Pineland Telephone would like to serve the customers that have selected MCI WorldCom.

MCI WorldCom Comments at pp. 19-20

Pineland does not offer intraLATA toll service or long distance service of any kind.



A.M. "Ben" Bennett

7-6-'99

Date

## CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Reply of the Rural LECs" was served on this 6th day of July, 1999 by first class, U.S. Mail, postage prepaid to the following parties:

  
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